

**MINUTES**  
**Montana Fish, Wildlife & Parks**  
**Commission Conference Call Meeting**  
**1420 East 6<sup>th</sup> Avenue – Helena Headquarters**  
**Helena, MT 59620**  
**JANUARY 12, 2007**

**Commission Members Present:** Steve Doherty, Chairman; Shane Colton; Vic Workman; Dan Vermillion; Willie Doll.

**Fish, Wildlife & Parks Staff Present:** Jeff Hagener, Director; Chris Smith, Chief of Staff; Larry Peterman, Chief of Field Operations; Bob Lane; Jack Lynch; Jim Kropp; Ken McDonald; Jeff Herbert; Quentin Kujala; Ron Aasheim; Mike Korn; Sam Sheppard; Melanie Frost; Regena Peterson.

**Guests:** Hal Harper, Governor's Office; Mike Volesky, Governor's Office; Matt Brown, Associated Press; Scott McMillan, Bozeman Daily Chronicle.

**Topics of Discussion:**

- 1. Opening – Call to Order**
- 2. 2007 Nez Perce Treaty Rights to Hunt Buffalo and Other Species**

- 1. Chairman Doherty** called the conference call meeting to order at 10:00a.m.

Director Hagener referred to the letter Fish, Wildlife & Parks (FWP) received from Rebecca Miles of the Nez Perce Tribe in Idaho. A copy of this letter was immediately provided to the Commissioners by fax and e-mail upon receipt by FWP. The letter states the Tribe intends to hunt buffalo and other species in Montana this year by virtue of their treaty rights.

Fish, Wildlife & Parks coordinated with the Nez Perce Tribe last year to provide a bison hunt, resulting in them harvesting 5 bison legally, and one bison without a permit. Sam Sheppard, FWP Region 3 Warden Captain, acted as the main liaison. This year, FWP hoped to begin coordination efforts earlier in the year, therefore a letter was written to them last February asking what their intentions were. No response was received from the Tribe, so in August another letter was sent to them. FWP heard nothing from the Nez Perce until early December when they indicated they planned to hunt bison as well as other species, but did not specify what their intentions were.

Hagener sent another letter dated January 4, 2007, stating that FWP wished to continue with coordinated efforts, and explained that the FWP Commission had authorized 140 permits this season, and suggested 15 bison be harvested by the Nez Perce Tribe.

The Nez Perce Tribe faxed a letter to FWP yesterday, January 11, stating they planned to take between 50-70 bison as well as other game animals including elk, moose, goat, sheep, and antelope. Their letter read *"The Nez Perce Tribe will take 50 to 70 buffalo through a permit system. This buffalo take allocation may change in-season if more or less buffalo become available. The Tribe has authorized take of other game animals (including elk, moose, bighorn sheep, mountain goats and antelope) to occur simultaneously with an authorized buffalo permit. The Tribe does not expect the take of other game species to exceed the minimum take limit for buffalo, or 50 animals per species."*

This raised concerns by the Department as FWP has been diligently managing all of those species. There are very few moose, sheep or antelope in that entire area, and due to low recruitment, permits have been limited in those areas.

Sam Sheppard, FWP Region 3 Warden Captain, said the Tribe has issued 6 bison permits for their initial hunt this upcoming weekend, which means one bison per permit. Their system is different than that of FWP. For instance, a permit can be issued to one tribal member who has three assistant hunters which means that a total of four people can have guns and shoot a bison. Each permit has a column for other species to be harvested. The first two permits do not have any other species checked, but permits three through six have indicated elk as a choice on their permits. Permit number six has indicated two elk to be harvested. The Tribe's intention for this initial hunt is to harvest 6 bison, and up to 5 elk. There are no sheep mentioned for this initial hunt. Sheppard asked the Tribe if it would be allowed if one of their people decided they wanted to shoot a sheep. He was told no, they could not because they have to be authorized to take a species under their permit system. They would have to go back home and get another permit issued to them.

Sheppard said non-enrolled members may accompany the permittees to assist in dressing the animal or dragging it, etc. Only enrolled Tribal members can actually partake in the hunt.

Hagener asked how the Tribe plans to proceed beyond this weekend. Sheppard said they said they will evaluate it as they go. This weekend is the Tribe's first round of hunting, and he has not yet gotten a feel as to whether or not they will issue more permits. He said they might see other game this weekend while shooting bison, and want to come back to shoot bighorn sheep on a subsequent hunt.

Hagener said the Department feels this weekend's hunt for bison and elk is sustainable, however the concern exists that the Tribe may want to harvest wildlife to the level they proposed in their letter, which is not. It is important to discuss the conservation and management of those species with the Tribe.

Doherty asked what arrangements the Tribe has made with enforcement. What arrangements have they made to police this hunt on federal lands or if they cross onto state lands?

Sheppard said the Tribe worked closely with FWP last year. They sent Tribal Wardens to Montana the day before the hunt to participate in orientation last year, and two of those same wardens are enroute today to meet with FWP wardens to discuss the parameters of the hunt. They police themselves on what their permits allow and what their rules are. They have to follow federal travel plans. For instance, they cannot go off of a road that the Forest Service has closed. If one of their people drives on a closed road, their wardens take care of that in their judicial system. Tribal Wardens can only enforce Tribal regulations on enrolled Tribal members. They have no jurisdiction on those who are not enrolled in the Tribe. If a non-enrolled person shoots an animal, that person is turned over to the state because they are operating outside the treaty rights. FWP wardens have complete jurisdiction in instances such as those. The same would apply if they ended up on state or private lands. They have no rights to be on those lands. Treaty rights allow the Nez Perce to hunt only on BLM and Forest Service lands.

Sheppard said the Tribal wardens worked very closely with FWP last year, and he expects the same this year. Last year when a bison was shot by a non-enrolled youth with no permit, the Tribal wardens were unhappy with that action, and said it would not happen again. FWP seized that bison and turned it over to the Tribal wardens for their food bank.

Doherty expressed concern regarding their proposal to hunt sheep, moose, goats and antelope, as well as the sustainability of the elk and bison. He asked if the Nez Perce coordinated with Montana or Idaho or Wyoming when they set their hunting quotas to determine whether the numbers they propose are sustainable from a population management perspective.

Hagener replied that FWP has not had any communications from them other than the letter received yesterday. Another concern was the statement in their regulations that reads *"The season structure and tribal allocation will be evaluated after the season closes to determine how well tribal needs were met and to recommend changes or adjustments that may be necessary for hunts in 2008 and beyond. This may include some form of abundance-based hunting management framework that can be applied to year-specific number of buffalo that exit the Yellowstone National Park."*

Doherty asked if the sheep permits are limited to 2 in that hunting district, to which Hagener replied yes. Sheep season was scheduled from September 15 through November 26, but was closed earlier when the quota was reached.

Doherty asked when moose season was. Moose season ran from September 15 through November 26.

Doherty asked how many moose permits are in the area the Tribe considers huntable.

Quentin Kujala, FWP Wildlife Manager, said moose districts adjacent to the Park have no antlerless opportunity, and have from 1 to 7 antlered bulls in various districts.

Hagener said the Tribe contends Buffalo Country is the greater Yellowstone area which includes the Gardiner area, the upper Yellowstone Valley, the Paradise Valley, the Gallatin Valley, and the Upper Madison into the West Yellowstone area.

Doherty asked if there are any goats in the area and when the season was. Hagener said the season ran from September 15 through November 26, and there are only a few permits in the Absaroka Beartooth area and in the south end of the Madison.

Doherty asked how many antelope permits were allotted and what the season was. Hagener replied the season ran from October 8 through November 5, and stated that there are very few antelope in the areas close to the Park.

Doherty asked why the Commission set the season lengths they did for sheep, moose, goats and antelope, and he questioned the rationale on stressing such small populations with hunting during the middle of winter.

Kujala said the dates set for all special licenses run from mid-September through the end of the general hunting season. The exception is that unlimited sheep districts close when the quota is met, and those quotas were met in 2006. He said there is a heightened sensitivity to those populations as far as any take there. The same concerns exist with the moose populations. One element of elk management is age structure. Low numbers mean low recruitment.

Doherty said the Commission sets season lengths and quotas based on the best biology and the best science possible. Quotas are based on population structures, recruitment levels, and age structures, which are all carefully monitored. The Tribe has not considered any data for setting a limit of 50 for any of the species in this area. He is concerned about stressing the resource.

Hal Harper, Governor's Policy Advisor, said the Tribe's letter indicates sensitivity to that aspect, and since they request that information be shared with them, that is a good sign. Harper said not to be concerned about the harvest number of 50 they indicated in their letter.

Workman said the Tribe has already authorized the take of other animals to occur simultaneously with the bison hunt. If FWP provides information after the fact, it will not serve any purpose. A stronger stance needs taken on this. Their letter is not reasonable. They are telling us what is going to happen, and that is not acceptable. They are already on their way to harvest wildlife whether the quota is too high or not.

Harper said there is time to communicate with the Tribe.

Colton said he feels that despite the language in their letter, they have demonstrated sensitivity to conservation and management efforts in the past.

Hagener said one of the complications FWP faces is communicating with the appropriate people within the Tribe. There are various segments within the Tribe. Rebecca Miles, Chairman of the Nez Perce Executive Committee that sets the basis of the hunt has authority over the enforcement people who are sensitive to the issues. The Nez Perce Wildlife Commission has different views than the enforcement people -- some do not feel they need to communicate with FWP at all.

Hagener stated that Sheppard has had the most direct contact with the Tribe. Dialogue with Rebecca Miles began last year in mid-January when they informed FWP they were coming over Superbowl weekend. FWP attempted to start communications earlier this year, but received no response from the Tribe until December when they informed the Department they planned to take what they wanted. The Department felt the Tribe could harvest 15 bison in consideration of the 140 that were authorized by the Commission, and that any expected take of other species would be discussed by FWP and the Tribe before actually occurring.

Colton inquired if FWP is apprehensive that the actual hunters may still feel they have a right to harvest the other animals. Sheppard said based on conversations with Tribal Commissioner Holt last year, the Tribe feels they have the right to harvest them. They refrained last year as they did not have FWP authorization. He feels they will hold to what is on the permit. If they do not, their enforcement will take over. Sheppard said he cannot say what they will reallocate after this weekend.

Colton asked if FWP would issue a citation if they take more than they are supposed to. Sheppard said not on federal land. FWP would allow the Tribal Wardens to do it because the Tribe wants to handle enforcement of their own people. Anything outside of their treaty rights FWP will handle. If in time agreements cannot be reached, FWP may issue citations.

Hagener said Tribal regulations do not implement the same safety regulations FWP has. For instance, they do not require hunters to wear hunter orange, and they do not prohibit shooting from vehicles. FWP has an obligation to notify other hunters that Tribal hunters are in the area so they are aware of these potential situations.

Colton said it is troubling that they told FWP they are going to harvest whatever number they choose. The Department needs to get a better idea of what they plan to go forward with. He asked how long they plan for their season to last. Hagener said until the end of February. The Commission-authorized regular season ends February 15. They do not have to abide by Montana's season structure according to treaty rights.

Hagener stated discussions have been initiated with the Confederated Salish & Kootenai Tribes regarding their treaty rights. They are working on finalizing the number of permits they will allow for hunting in the area. They will not be hunting in 2007, but intend to hunt in 2008.

Colton said a discussion needs to take place with Chairman Miles to get a feel for their understanding of Montana's management practices. He questioned whether the discussion should be initiated by the Governor's office or by the FWP Director's Office. He shares Workman's concerns that although this weekend looks fine, the weeks ahead may present a challenge.

Hagener said he recommends that FWP send a letter today to the Tribe that states FWP wants to continue coordinated efforts with them this weekend, but beyond this weekend there are major concerns that FWP feels needs addressed through a face to face meeting with the critical representatives involved. FWP hopes they do not go further, but if they go home after this weekend and decide they want to come back to shoot the elk, sheep, goats, antelope, moose, and deer they saw over the weekend, the Department needs another avenue to protect those animals.

Workman asked who and how they can be stopped if they become unreasonable. There is no indication they have any interest in being reasonable. Can the FWP Commission stop them, or the Governor, or the Legislature, or the court system? They cannot be allowed to decimate these species, and they cannot be allowed to thumb their noses at the sportsmen of Montana.

Harper said a response must be prepared by FWP that explains what the Department feels the effects will be on the population. Harper said "what we see should not be cause for great alarm. Lets not assume the response will be negative".

Workman stated it is imperative to be prepared for next week if they do not listen to the Department. Doherty said Workman raises a valid point. This weekend will present an opportunity to provide the Tribe with information about the population structure and the negative effects of hunting sheep and moose and goats and antelope, as there are not many animals in the area. They are a discreet and limited population.

Doherty said the Department and Commission is cognizant of treaty rights, however the Tribe needs to be informed that these populations must be maintained for both Montana and tribal hunters. There is a great responsibility to the resource. The Nez Perce have been in the forefront to keep fish populations alive, so they have demonstrated resource sensitivity. Discussions need to be held to reveal what biologists are seeing. The Confederated Salish & Kootenai need to be included as well as they, too, have expressed interest in exercising treaty rights.

Workman said in the recent history, a tribal member was over-fishing an area, and a governor used his executive powers to instruct wardens to curtail the amount of fishing that was going on. If these people are unreasonable next week, what are the options, who has the authority to stop them? Can Governor Schweitzer step in and do anything?

Harper said to deal with the issue at hand. If it becomes apparent that there is any intention they plan to do what Workman fears, that is the time to deal with it. Right now is not the time to plan future strategy. What he has seen shows a willingness to be reasonable. We need to make concerns known to them, but this is not the time to issue threats.

Mike Volesky, Governor's Policy Advisor, said the Governor's admonition was not to assume the worst or to over-react. He said immediate communication with the Tribe needs to be initiated that informs them that a face-to-face meeting needs to be held before their next authorization.

Hagener proposed that FWP draft a letter to the Nez Perce immediately following this call that outlines what was discussed today, and he will set up a meeting with the Tribe to occur within the next week. Hagener said he would attend the meeting, as would Sam Sheppard, a biologist, and any Commissioners who wished to participate.

Workman said we have to tell them they cannot come to Montana and decimate the wildlife. He said their letter has authorized 50 tags for each species even if they have not permitted them yet. They are telling us what they are going to do. We thought they were working with us, and then found they were not.

Colton said to hope for the best and plan for the worst, to open communications, and to look at available options of what can be done in the event we become concerned about the viability of the wildlife. Treaty rights need to be recognized, and FWP has done that. Doing anything that is not in the spirit of cooperation could have long-term negative effects.

*Action: Colton moved and Workman seconded the motion that the Department open discussions, written, verbal and through a face-to-face meeting as soon as possible with the Nez Perce and share information on management and concerns.*

Workman again asked what the options are. He said he wants that question answered.

Bob Lane, FWP Chief Legal Counsel, said the Legal Unit is working with the Attorney General's Office to look into treaty rights and what limits there may be on them. Treaty rights cannot exceed the conservation needs of the species. How that relates to biological management will have to be determined. This is all being reviewed in case things do not work out with a cooperative effort with the Tribe. Lane said that obviously, the first thing is to try to have a cooperative effort, but FWP needs to look at our bottom lines too.

Vermillion asked if any other tribes have the same treaty rights? Hagener replied that it is the Department's understanding that these treaty rights, referred to as the Stevens Treaty Rights, apply to tribes west of the divide. The Confederated Salish & Kootenai Tribes have exercised their rights for moose in the past.

*Action on Motion Motion carried.*

Colton said the elk hunters out in the field will be surprised when they find out what is taking place. He encouraged the Department to do whatever possible to let them know what is going on, and to inform them there may be hunters in the field not wearing hunter orange.

The conference call meeting adjourned at 11:25a.m.

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**Steve Doherty, Chairman**

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**M. Jeff Hagener, Director**